

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ELBERT MULDREW,

Plaintiff,

v.

WARDEN MACKEY,

Defendant.

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CIVIL ACTION NO. 5:17-CV-00216-RWS

ORDER

Elbert Muldrew, proceeding *pro se*, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636.

Petitioner is challenging a conviction for burglary of a habitation. The Magistrate Judge submitted a Report and Recommendation, recommending the petition be dismissed as barred by the applicable statute of limitations. Docket No. 23. The Court has considered that Report and Recommendation, the record, all pleadings and all available evidence. Petitioner has not objected to the Magistrate Judge's Report and Recommendation.¹

As no objections have been filed, the Court reviews the Magistrate Judge's findings of fact and conclusions of law for plain error. *Rodriguez v. Bowen*, 857 F.2d 276, 276–77 (5th Cir. 1988).

The Court agrees with the Magistrate Judge's findings and conclusions. Petitioner did not file his petition until after the statutory period expired. *See* 28 U.S.C. § 2244(d). Accordingly,

¹ The Report and Recommendation was mailed to Petitioner's last known address, the Dallas County Jail, on November 5, 2019. The acknowledgment card for the Report and Recommendation was returned to the Court with no signature. Previous correspondence mailed to petitioner at this address was returned to the Court with a notation stating Petitioner was no longer confined in the Dallas County Jail. Petitioner is a *pro se* litigant, and, under the Local Rules of the Eastern District of Texas, *pro se* litigants must provide the Court with a physical address and are responsible for keeping the clerk advised in writing of the current address. Local Rule CV-11(d).

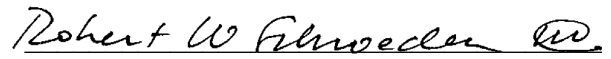
finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge as the findings and conclusions of this Court.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate he would prevail on the merits. Rather, he must demonstrate the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions raised are worth of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

In this case, the Petitioner has not shown that the issue of whether his petition is barred by the applicable statute of limitations is subject to debate among jurists of reason. Nor has he shown that the questions presented are worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

It is therefore **ORDERED** that this petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE**.

So ORDERED and SIGNED this 4th day of December, 2019.



ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE